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AMAZON.COM, INC. and
12 AMAZON LOGISTICS, INC.

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA
15

16 PERSIS KNIPE, an individual, on
behalf of herself, on behalf of all persons
17 similarly situated,

18 Plaintiff,

19 vs.

20 AMAZON.COM, INC., a corporation;
21 AMAZON LOGISTICS, INC., a
corporation; and DOES 1 through 50,

22 Defendants.
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Case No. '17CV1889 WQHJMA

**DEFENDANTS' NOTICE OF
REMOVAL OF ACTION TO
THE UNITED STATES
DISTRICT COURT OF THE
SOUTHERN DISTRICT OF
CALIFORNIA**

[28 U.S.C. §§ 1332, 1441, and 1446]

TABLE OF CONTENTS

I.	PROCEDURAL BACKGROUND	1
II.	REMOVAL IS TIMELY	2
III.	THIS COURT HAS ORIGINAL SUBJECT MATTER JURISDICTION UNDER CAFA.....	3
A.	The Putative Class Has More than 100 Members.....	3
B.	Diversity of Citizenship Exists.	4
C.	The Amount in Controversy Exceeds \$5,000,000.....	6
D.	Plaintiff’s Fourth Cause of Action for Failure to Provide Accurate Itemized Wage Statements Puts \$7,497,300 in Controversy.....	8
E.	Plaintiff’s Claim for Waiting Time Penalties Puts \$3,376,713.60 in Controversy.....	9
F.	Plaintiff’s Other Causes of Action Put Additional Amounts in Controversy, Clearly Exceeding the CAFA Threshold.	10
IV.	VENUE.....	12
V.	NOTICE	13
VI.	CONCLUSION	13

TABLE OF AUTHORITIES

Cases

<i>Boon v. Allstate Ins. Co.</i> , 229 F. Supp. 2d 1016 (C.D. Cal. 2002).....	4
<i>Brady v. Mercedes-Benz USA, Inc.</i> , 243 F. Supp. 2d 1004 (N.D. Cal. 2002).....	12
<i>Dart Cherokee Basin Operating Company, LLC v. Owens</i> , 135 S. Ct. 547 (2014).....	6, 7
<i>Gallegos v. Atria Mgmt. Co., LLC</i> , 2016 U.S. Dist. LEXIS 104323 (C.D. Cal. Aug. 4, 2016).....	7
<i>Giannini v. Northwestern Mut. Life Ins. Co.</i> , 2012 U.S. Dist. LEXIS 60143 (N.D. Cal. Apr. 30, 2012).....	12
<i>Guglielmino v. McKee Foods Corp.</i> , 506 F.3d 696 (9th Cir. 2007).....	11
<i>Hertz Corp. v. Friend</i> , 559 U.S. 77 (2010).....	5
<i>Ibarra v. Manheim Invs., Inc.</i> , 775 F.3d 1193 (9th Cir. 2015).....	7
<i>In re Quintus Sec. Litig.</i> , 148 F. Supp. 2d 967 (N.D. Cal. 2001).....	12
<i>Jordan v. Nationstar Mortg., LLC</i> , 781 F.3d 1178 (9th Cir. 2015).....	6
<i>Kanter v. Warner-Lambert Co.</i> , 265 F.3d 853 (9th Cir. 2001).....	4
<i>LaCross v. Knight Transportation Inc.</i> , 775 F.3d 1200 (9th Cir. 2015).....	7
<i>Lew v. Moss</i> , 797 F.2d 747 (9th Cir. 1986).....	4
<i>Lewis v. Verizon Communs., Inc.</i> , 627 F.3d 395 (9th Cir. 2010).....	8
<i>Long v. Destination Maternity Corp.</i> , 2016 WL 1604968 (S.D. Cal. Apr. 21, 2016).....	11
<i>Oda, et al. v. Gucci Am., Inc.</i> , 2015 U.S. Dist. LEXIS 1672 (C.D. Cal. Jan. 7, 2015).....	6
<i>Richardson v. Servicemaster Global Holdings Inc.</i> , 2009 U.S. Dist. LEXIS 122219 (N.D. Cal. Dec. 15, 2009).....	12

1	<i>Roa v. TS Staffing Servs, Inc.</i> ,	
2	2015 U.S. Dist. LEXIS 7442 (C.D. Cal. 2015)	7
3	<i>Sanchez v. Russell Sigler, Inc.</i> ,	
4	2015 WL 12765359 (C.D. Cal. April 28, 2015).....	7, 12
5	<i>Sasso v. Noble Utah Long Beach, LLC</i> ,	
6	2015 U.S. Dist. LEXIS 25921 (C.D. Cal. Mar. 3, 2015)	12
7	<i>Singer v. State Farm Mut. Auto. Ins. Co.</i> ,	
8	116 F.3d 373 (9th Cir. 1997)	6
9	<i>Standard Fire Ins. Co. v. Knowles</i> ,	
10	568 U.S. 588 (2013).....	6
11	<i>United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv.</i>	
12	<i>Workers Int'l Union, AFL-CIO, CLC v. Shell Oil Co.</i> ,	
13	602 F.3d 1087 (9th Cir. 2010)	4
14	<i>Washington v. Hovensa LLC</i> ,	
15	652 F.3d 340 (3d Cir. 2011)	4, 5

Federal Statutes

16	28 U.S.C. § 1332.....	passim
17	28 U.S.C. § 1332(d)(2)	3, 4
18	28 U.S.C. § 1332(d)(2)(A).....	6
19	28 U.S.C. § 1332(d)(6)	6
20	28 U.S.C. § 1441.....	1, 3, 12
21	28 U.S.C. § 1446.....	1, 2, 3, 13

State Statutes

22	Cal. Bus. & Prof Code §§ 17200, <i>et seq.</i>	1
23	Cal. Code of Civ. Proc. § 340.....	4, 9
24	Cal. Code of Civ. Proc. § 382.....	2, 3
25	Cal. Lab. Code § 201	9
26	Cal. Lab. Code § 202	9
27	Cal. Lab. Code § 203	10
28	Cal. Lab. Code § 226	1, 8, 9
	Cal. Lab. Code § 510	1

1 Cal. Lab. Code § 1194 1

2 Cal. Lab. Code § 1197 1

3 Cal. Lab. Code §§ 1198, *et. seq.*..... 1, 7

4 Cal. Lab. Code § 2802 1

5 **Other Authorities**

6 Senate Judiciary Report, S. REP. 109-14 (2005) 6

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1 **TO THE UNITED STATES DISTRICT COURT FOR THE**
 2 **SOUTHERN DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND HER**
 3 **ATTORNEYS OF RECORD:**

4 **PLEASE TAKE NOTICE THAT**, Defendants Amazon.com, Inc. and
 5 Amazon Logistics, Inc. (“Amazon” or “Defendants”), by and through their counsel,
 6 remove the above-entitled action to this Court from the Superior Court of the State
 7 of California, County of San Diego, pursuant to 28 U.S.C. §§ 1332, 1441, and
 8 1446. This removal is based on the following grounds:

9 **I. PROCEDURAL BACKGROUND**

10 1. On August 9, 2017, Plaintiff Persis Knipe (“Plaintiff”) filed an
 11 unverified putative class action complaint against Amazon in San Diego County
 12 Superior Court, entitled *Persis Knipe, an individual and on behalf of all persons*
 13 *similarly situated v. Amazon.com, Inc., Amazon Logistics, Inc. and Does 1 through*
 14 *50, inclusive*, Case No. 37-2017-00029426-CU-OE-CTL. Plaintiff seeks damages
 15 and penalties for: (1) unfair competition in violation of Cal. Bus. & Prof Code
 16 Sections 17200, *et seq.*; (2) failure to pay minimum wage in violation of Cal. Labor
 17 Code Sections 1194, 1197, and 1197.1; (3) failure to pay overtime wages in
 18 violation of Cal. Labor Code Sections 510, 1194, and 1198, *et. seq.*; (4) failure to
 19 provide accurate itemized wage statements in violation of Cal. Labor Code Section
 20 226; and (5) failure to reimburse employees for required expenses in violation of
 21 Cal. Labor Code Section 2802.

22 2. On August 15, 2017, Plaintiff served copies of the Summons,
 23 Complaint, and Civil Case Cover Sheet on the registered agents for Defendants.
 24 Copies of these documents are attached hereto as **Exhibit A**. Exhibit A constitutes
 25 all of the pleadings, process, and orders served upon Amazon or filed in the
 26 Superior Court action.

27 3. Plaintiff contends that she was employed by Amazon as a Delivery
 28 Drive, but misclassified as an independent contractor. Complaint ¶ 3. Plaintiff

1 contends that Amazon “has the authority to exercise complete control over the work
 2 performed and the manner and means in which the work is performed.” Complaint
 3 ¶ 7. Amazon disputes these allegations. Amazon denies that it employed Plaintiff
 4 or any other member of the putative class.

5 4. Plaintiff now seeks to represent the following two classes, the
 6 California Class:

7 as all individuals who worked for DEFENDANT in California as
 8 Delivery Drivers and who were classified as independent contractors
 9 (the “CALIFORNIA CLASS”) at any time during the period beginning
 10 four (4) years prior to the filing of this Complaint and ending on the
 11 date as determined by the Court (the CALIFORNIA CLASS
 PERIOD”);

12 and the California Labor Sub-Class:

13 all members of the CALIFORNIA CLASS who are or previously were
 14 employed by DEFENDANT in California as Delivery Drivers and who
 15 were classified as Independent Contractors (the “CALIFORNIA
 16 LABOR SUB-CLASS”) at any time during the period three (3) years
 17 prior to the filing of the Complaint and ending on the date as
 18 determined by the Court (the “CALIFORNIA LABOR SUB-CLASS
 PERIOD”) pursuant to Cal. Code of Civ. Proc. § 382.

19 Complaint, ¶¶ 10, 32.

20 **II. REMOVAL IS TIMELY**

21 5. Plaintiff served the registered agents for Defendants on August 15,
 22 2017. Because this Notice of Removal is filed within thirty days of service of the
 23 Summons and Complaint, it is timely under 28 U.S.C. §§ 1446(b) and 1453. *See*
 24 *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999). No
 25 previous Notice of Removal has been filed or made with this Court for the relief
 26 sought herein.

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1 **III. THIS COURT HAS ORIGINAL SUBJECT MATTER JURISDICTION** 2 **UNDER CAFA**

3 6. Plaintiff brings this action as a putative class action under Cal. Code
4 Civ. Proc. § 382. Complaint, ¶ 28. Removal based on Class Action Fairness Act
5 (“CAFA”) diversity jurisdiction is proper pursuant to 28 U.S.C. §§ 1441, 1446, and
6 1453 because: (1) the amount placed in controversy by the Complaint exceeds, in
7 the aggregate, \$5 million, exclusive of interest and costs; (2) the aggregate number
8 of putative class members is 100 or greater; and (3) diversity of citizenship exists
9 between one or more plaintiffs and both defendants. 28 U.S.C. §§ 1332(d)(2),
10 1332(d)(5)(B), and 1453. Amazon denies Plaintiff’s factual allegations and denies
11 that Plaintiff, or the class or sub-class she purports to represent, is entitled to the
12 relief requested; however, based on Plaintiff’s allegations in the Complaint and
13 prayer for relief, all requirements for jurisdiction under CAFA have been met.¹
14 Accordingly, diversity of citizenship exists under CAFA and this Court has original
15 jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2).

16 **A. The Putative Class Has More than 100 Members.**

17 7. Plaintiff asserts claims on behalf of a putative class comprised of:

18 . . . all individuals who worked for DEFENDANT in California as
19 Delivery Drivers and who were classified as independent contractors
20 (the “CALIFORNIA CLASS”) at any time during the period beginning
21 four (4) years prior to the filing of this Complaint and ending on the
22 date as determined by the Court (the “CALIFORNIA CLASS
PERIOD”).

23 Complaint, ¶ 10.

24 8. Amazon offers various products for purchase online through its
25 website and mobile application. These products historically have been delivered by

26 ¹ Defendants do not concede, and reserve the right to contest at the appropriate
27 time, Plaintiff’s allegations that this action can properly proceed as a class action.
28 Defendants do not concede that any of Plaintiff’s allegations constitute a cause of
action against either of them under applicable California law.

1 large third-party delivery providers (e.g., Federal Express, UPS and the U.S. Postal
 2 Service). Defendant Amazon Logistics, Inc. (“Amazon Logistics”) began to
 3 supplement the use of large providers by contracting with individuals crowdsourced
 4 through a smartphone-application-based program known as Amazon Flex. These
 5 individuals contract with Amazon Logistics and are known as Delivery Partners
 6 (“DPs”). Declaration of Kyle Bowers (“Bowers Decl.”), ¶ 3. Based on
 7 Defendants’ understanding of the intended scope of Plaintiff’s definition, the
 8 putative class contains at least 11,262 DPs who have performed delivery services
 9 through the Amazon Flex mobile application in California. Declaration of Peter
 10 Nickerson (“Nickerson Decl.”), ¶¶ 3-4.

11 **B. Diversity of Citizenship Exists.**

12 9. To satisfy CAFA’s diversity requirement, a party seeking removal
 13 need only show that minimal diversity exists; that is, one putative class member is a
 14 citizen of a state different from that of one defendant. 28 U.S.C. § 1332(d)(2);
 15 *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv.*
 16 *Workers Int’l Union, AFL-CIO, CLC v. Shell Oil Co.*, 602 F.3d 1087, 1090–91 (9th
 17 Cir. 2010) (finding that to achieve its purposes, CAFA provides expanded original
 18 diversity jurisdiction for class actions meeting the minimal diversity requirement
 19 set forth in 28 U.S.C. § 1332(d)(2)).

20 10. “An individual is a citizen of the state in which he is domiciled”
 21 *Boon v. Allstate Ins. Co.*, 229 F. Supp. 2d 1016, 1019 (C.D. Cal. 2002) (citing
 22 *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)). For purposes
 23 of diversity of citizenship jurisdiction, citizenship is determined by the individual’s
 24 domicile at the time that the lawsuit is filed. *Lew v. Moss*, 797 F.2d 747, 750 (9th
 25 Cir. 1986). Evidence of continuing residence creates a presumption of domicile.
 26 *Washington v. Hovensa LLC*, 652 F.3d 340, 345 (3d Cir. 2011). According to
 27 Amazon Logistics, Inc.’s records, Plaintiff lives in California. Bowers Decl., ¶ 5.
 28 Further, Plaintiff admits that she worked in California and is a resident of San

1 Diego County, California. Complaint, ¶ 42. The Complaint does not allege any
 2 alternate state citizenship. Therefore, Plaintiff is a citizen of California for diversity
 3 jurisdiction purposes. Moreover, Plaintiff has brought claims on behalf of putative
 4 class members residing in California. Thus, at least one putative class member is a
 5 citizen of California for diversity jurisdiction purposes.

6 11. Pursuant to 28 U.S.C. § 1332, “a corporation shall be deemed to be a
 7 citizen of every State and foreign state by which it has been incorporated and of the
 8 State or foreign state where it has its principal place of business.” 28 U.S.C.
 9 § 1332(c)(1). The “principal place of business” for the purpose of determining
 10 diversity subject matter jurisdiction refers to “the place where a corporation’s
 11 officers direct, control, and coordinate the corporation’s activities...[I]n practice it
 12 should normally be the place where the corporation maintains its headquarters-
 13 provided that the headquarters is the actual center of direction, control, and
 14 coordination, i.e., the ‘nerve center,’ and not simply an office where the corporation
 15 holds its board meetings” *See Hertz Corp. v. Friend*, 559 U.S. 77, 92-93
 16 (2010). Both Amazon Logistics, Inc. and Amazon.com, Inc. maintain their
 17 corporate headquarters in Seattle, Washington, from which corporate activities are
 18 directed, controlled and coordinated. Declaration of Mark Hoffman (“Hoffman
 19 Decl.”), ¶¶ 3-4.

20 12. DPs enter into an “Independent Contractor Terms of Service”
 21 agreement with Defendant Amazon Logistics, Inc., which is incorporated under the
 22 laws of Delaware and has its headquarters in Seattle, Washington. Hoffman Decl.,
 23 ¶ 3. Amazon.com, Inc. is also incorporated under the laws of Delaware and has its
 24 headquarters in Seattle, Washington. Hoffman Decl., ¶ 4. Accordingly,
 25 Amazon.com, Inc. and Amazon Logistics, Inc. are citizens of Washington and
 26 Delaware for the purpose of determining diversity. 28 U.S.C. § 1332(c)(1).

27 13. Therefore, based on the Complaint, at least one member of the putative
 28 plaintiff class is a citizen of a state different than at least one defendant. As a result,

diversity jurisdiction exists under CAFA. 28 U.S.C. § 1332(d)(2)(A) (requiring only “minimal diversity” under which “any member of a class of plaintiffs is a citizen of a State different from any Defendant”).

C. The Amount in Controversy Exceeds \$5,000,000.

14. Pursuant to CAFA, the claims of the individual members in a class action are aggregated to determine if the amount in controversy exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(6). Because Plaintiff does not expressly plead a specific amount of damages, a removing party need only show that it is more likely than not that the amount in controversy exceeds \$5 million.² See *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997).

15. Amazon’s burden to establish the amount in controversy is by a preponderance of the evidence. *Dart Cherokee Basin Operating Company, LLC v. Owens*, 135 S. Ct. 547 (2014). See also *Jordan v. Nationstar Mortg., LLC*, 781 F.3d 1178, 1183 (9th Cir. 2015) (citing *Dart Cherokee* for the proposition that there is no anti-removal presumption against CAFA cases). A removing party seeking to invoke CAFA jurisdiction “need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee*, 135 S. Ct. at 554. “If a federal court is uncertain about whether ‘all matters in controversy’ in a purported class action ‘do not in the aggregate exceed the sum or value of \$5,000,000,’ the court should err in favor of exercising jurisdiction over the case.” Senate Judiciary Report, S. REP. 109-14, at 42 (2005) (citation omitted).

16. A removing defendant is “not required to comb through its records to identify and calculate the exact frequency of violations.” *Oda, et al. v. Gucci Am., Inc.*, 2015 U.S. Dist. LEXIS 1672, at *12 (C.D. Cal. Jan. 7, 2015); see *Sanchez v.*

² Plaintiff’s boilerplate contention that the amount in controversy for the alleged California class is less than \$5 million in damages is properly disregarded. Complaint, ¶ 10. See *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 593 (2013).

1 *Russell Sigler, Inc.*, 2015 WL 12765359, *2 (C.D. Cal. April 28, 2015) (“[A]
 2 removing defendant is not obligated to research, state and prove the plaintiff’s
 3 claims for damages.”) (citation omitted). *See also LaCross v. Knight*
 4 *Transportation Inc.*, 775 F.3d 1200, 1203 (9th Cir. 2015) (rejecting plaintiff’s
 5 argument for remand based on the contention that the class may not be able to
 6 prove all amounts claimed: “Plaintiffs are conflating the amount in controversy
 7 with the amount of damages ultimately recoverable.”); *Ibarra v. Manheim Invs.,*
 8 *Inc.*, 775 F.3d 1193, 1198 n.1 (9th Cir. 2015) (in alleging the amount in
 9 controversy, defendants “are not stipulating to damages suffered, but only
 10 estimating the damages in controversy.”). The ultimate inquiry is what amount is
 11 put “in controversy” by the plaintiff’s complaint, not what a defendant will actually
 12 owe. *LaCross*, 775 F.3d at 1202 (citation omitted) (explaining that courts are
 13 directed “to first look to the complaint in determining the amount in controversy”).

14 17. Under *Dart Cherokee*, a removing defendant is not required to submit
 15 evidence in support of its removal allegations. *Roa v. TS Staffing Servs, Inc.*, 2015
 16 U.S. Dist. LEXIS 7442, at *4-5 (C.D. Cal. 2015). However, as detailed below,
 17 Amazon has established by a preponderance of the evidence that the amount in
 18 controversy exceeds \$5 million and that the Court has jurisdiction pursuant to
 19 CAFA. *See, e.g., Gallegos v. Atria Mgmt. Co., LLC*, 2016 U.S. Dist. LEXIS
 20 104323, at *4-5 (C.D. Cal. Aug. 4, 2016) (denying remand and holding calculations
 21 for the purposes of CAFA removal to be grounded in “reasonable assumptions”
 22 where the defendant’s Director of Payroll multiplied the number of employees by
 23 workweeks and average rates of pay to calculate meal period and rest break claims).
 24 As discussed below, when the claims of the putative class members in the present
 25 case are aggregated, their claims put into controversy over \$5 million in potential
 26 damages. 28 U.S.C. § 1332(d)(2).

27 18. Although Amazon denies Plaintiff’s factual allegations and denies that
 28 she or the class she seeks to represent are entitled to the relief for which she has

1 prayed, Plaintiff's allegations and prayer for relief have "more likely than not" put
 2 into controversy an amount that exceeds the \$5 million threshold when aggregating
 3 the claims of the putative class members as set forth in 28 U.S.C. § 1332(d)(6).³

4 **D. Plaintiff's Fourth Cause of Action for Failure to Provide Accurate**
 5 **Itemized Wage Statements Puts \$7,497,300 in Controversy.**

6 19. The first delivery by a DP in California through the Amazon Flex app
 7 program occurred on October 2, 2016. Bowers Decl., ¶ 4. Accordingly, the relevant
 8 class period begins October 2, 2016 (the "class period"), regardless of whether a
 9 claim has a one year limitations period or a longer period. Based on Plaintiff's
 10 class definition, available data was reviewed for 11,262 DPs who provided delivery
 11 services in California through the Amazon Flex app. Nickerson Decl., ¶¶ 3-4.

12 20. Plaintiff contends that Defendants failed "to provide Plaintiff and the
 13 other members of the CALIFORNIA CLASS with complete and accurate wage
 14 statements" including, "among other things, the correct amount of time worked,
 15 including, work performed in excess of eight (8) hours in a workday and/or forty
 16 (40) hours in any workweek." in violation of Labor Code section 226. Complaint
 17 ¶ 19. In this regard, Plaintiff alleges that Amazon, as a result of uniform policy,
 18 "inaccurately calculates the correct time worked and consequently underpays the
 19 actual time worked by PLAINTIFF and other members of the CALIFORNIA

20 ³ This Notice of Removal discusses the nature and amount of damages placed at
 21 issue by Plaintiff's Complaint. Defendants' references to specific damage amounts
 22 and citation to comparable cases are provided solely for establishing that the
 23 amount in controversy is more likely than not in excess of the jurisdictional
 24 minimum. Defendants maintain that each of Plaintiff's claims is without merit and
 25 that Defendants are not liable to Plaintiff or any putative class member. Defendants
 26 expressly deny that Plaintiff or any putative class member is entitled to recover any
 27 of the penalties sought in the Complaint. In addition, Defendants deny that liability
 28 or damages can be established on a class-wide basis. No statement or reference
 contained herein shall constitute an admission of liability or a suggestion that
 Plaintiff will or could actually recover any damages based upon the allegations
 contained in the Complaint or otherwise. "The amount in controversy is simply an
 estimate of the total amount in dispute, not a prospective assessment of
 [Defendants'] liability." *Lewis v. Verizon Communs., Inc.*, 627 F.3d 395, 400 (9th
 Cir. 2010).

LABOR SUB-CLASS.” Complaint ¶¶ 66-68. In addition to these alleged violations, Plaintiff also contends that Amazon “fail[ed] to issue PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code §§ 226 et. seq.” *Id.* ¶ 83. Plaintiff alleges that her claims “are typical of the claims of each member of the CALIFORNIA CLASS.” Complaint ¶ 28(c). Thus, Plaintiff’s theory is that during any week a putative class member was paid by Defendants, a wage statement violation occurred. Plaintiff alleges that these violations were knowing and intentional and, as a result, seeks to “recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, but not more than \$4,000.00 for PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein.” *Id.* ¶ 84.

21. A wage statement claim has a one-year statute of limitations. *See* Code Civ. Proc. § 340. As Defendants did not launch the Amazon Flex app program in California until October 2, 2016, all members of the putative class are included in Plaintiff’s claim for wage statement penalties. Between October 2, 2016 and March 28, 2017, putative class members were paid by Amazon Logistics, Inc. during a total of 80,574 weeks. Nickerson Decl., ¶ 4. No putative class member received more than 41 checks during this time period. Nickerson Decl., ¶ 5. Therefore, under Plaintiff’s theory, Plaintiff’s claim for wage statement penalties places \$7,497,300 in controversy (11,262 putative class members x \$50 penalty for initial alleged wage statement violation + (69,312 remaining weeks paid x \$100 penalty for subsequent alleged wage statement violations) = \$7,494,300).

E. Plaintiff’s Claim for Waiting Time Penalties Puts \$3,376,713.60 in Controversy.

22. Plaintiff seeks waiting time penalties for failure to pay minimum wages and failure to pay overtime wages, respectively. Complaint ¶¶ 74, 79. Plaintiff claims that Defendants “violate[d] Labor Code §§ 201 and/or 202” by

1 failing to pay minimum wage “and therefore these individuals are also be [sic]
 2 entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are
 3 sought herein on behalf of these CALIFORNIA LABOR SUB-CLASS Members”
 4 Complaint ¶ 74. Plaintiff also claims that “[t]o the extent overtime compensation is
 5 determined to be owed to the CALIFORNIA CLASS Members who have
 6 terminated their employment, these employees would also be entitled to waiting
 7 time penalties under Cal. Lab. Code § 203, which penalties are sought herein.” *Id.*
 8 ¶ 79. Plaintiff alleges that she and the “CALIFORNIA LABOR SUBCLASS
 9 Members were regularly required to work, and did in fact work, overtime that
 10 DEFENDANT never recorded.” *Id.* ¶ 76 (emphasis added).

11 23. There are 754 members of the putative class who stopped participating
 12 in the Flex Program as of February 11, 2017. Nickerson Decl., ¶ 6. Based on
 13 Plaintiff’s allegations, these putative class members who no longer participate in
 14 the Flex Program seek up to 30 days of waiting time penalties pursuant to Labor
 15 Code section 203. The average hourly rate of pay for each class member is \$18.66.
 16 Accordingly, Plaintiff’s Fifth Cause of Action puts another \$3,376,713.60 in
 17 controversy (754 putative class members x at least 8 hours per work day x 18.66
 18 per hour x 30 days = \$3,376,713.60).

19 **F. Plaintiff’s Other Causes of Action Put Additional Amounts in**
 20 **Controversy, Clearly Exceeding the CAFA Threshold.**

21 24. Plaintiff’s alleged amount in controversy just as to the wage statement
 22 and waiting time claims is at least \$10,874,013.60. Amazon has established this
 23 amount based on Plaintiff’s own allegations and the evidence presented with this
 24 Notice of Removal. However, in addition to this amount, Plaintiff’s other causes of
 25 action place additional amounts in controversy, thus further exceeding the CAFA
 26 threshold.

27 ///

28 25. Plaintiff contends that Amazon “maintained a uniform wage practice

1 of paying PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
 2 CLASS without regard to the correct amount of time they worked.” Complaint,
 3 ¶ 66. Plaintiff contends that she and the putative class members were deprived of
 4 minimum wages “as a matter of uniform company policy, practice, and procedure”:
 5 Amazon “inaccurately calculates the correct time worked and consequently
 6 underpays the actual time.” *Id.* ¶¶ 68, 72. As such, Plaintiff’s second cause of
 7 action for failure to pay minimum wages places additional amounts in controversy
 8 as to the alleged class.

9 26. Plaintiff’s third cause of action for failure to pay overtime places
 10 further amounts in controversy where Plaintiff “contends it often takes PLAINTIFF
 11 and the other Delivery Drivers more time to complete their deliveries than their
 12 scheduled shifts, but drivers do not receive additional compensation for this extra
 13 time.” *Id.* ¶ 6 (emphasis added). Plaintiff likewise alleges that she and the
 14 “CALIFORNIA LABOR SUBCLASS Members were regularly required to work,
 15 and did in fact work, overtime that DEFENDANT never recorded.” *Id.* ¶ 76
 16 (emphasis added). Thus, Plaintiff’s third cause of action places an even greater
 17 amount in controversy as to the alleged class.

18 27. Plaintiff also seeks damages for failure to reimburse business expenses
 19 under her fifth cause of action. *Id.* ¶ 85. Plaintiff claims she and other class
 20 members were not reimbursed for use of their personal cell phones, personal
 21 vehicles, or costs related to travel. *Id.* ¶¶ 18, 87. Plaintiff’s fifth cause of action
 22 thus places an even greater amount in controversy as to the alleged class.

23 28. Plaintiff also seeks recovery of attorneys’ fees. Complaint, Prayer for
 24 Relief ¶ 3(C). Attorneys’ fees are properly included in determining the amount in
 25 controversy here. *See Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 698 (9th
 26 Cir. 2007); *Long v. Destination Maternity Corp.*, No. 15CV2836-WQH-RBB, 2016
 27 WL 1604968, at *11 (S.D. Cal. Apr. 21, 2016) (holding that “when a reasonable
 28 estimate of attorneys' fees is added to the amount in controversy . . . the

jurisdictional minimum is clearly satisfied”); *Brady v. Mercedes-Benz USA, Inc.*, 243 F. Supp. 2d 1004, 1010-11 (N.D. Cal. 2002); *see also Sasso v. Noble Utah Long Beach, LLC*, No. CV 14-09154-AB AJWX, 2015 U.S. Dist. LEXIS 25921, at *5-6 (C.D. Cal. Mar. 3, 2015) (“The Court believes that, when authorized by an underlying statute, the better view is to consider post-removal attorneys’ fees because they are part of the total ‘amount at stake.’”) (citations omitted); *Giannini v. Northwestern Mut. Life Ins. Co.*, 2012 U.S. Dist. LEXIS 60143, at *4 (N.D. Cal. Apr. 30, 2012) (citing to *Brady* while holding that a reasonable estimate of future attorneys’ fees can be used in calculating the amount in controversy); *Richardson v. Servicemaster Global Holdings Inc.*, No. C 12-77 CW, 2009 U.S. Dist. LEXIS 122219, at *4 (N.D. Cal. Dec. 15, 2009) (considering attorneys’ fees in determining amount in controversy for diversity jurisdiction and citing to *Brady* as basis for same).

29. Amazon denies Plaintiff’s claim for attorneys’ fees. However, for purposes of removal, the Ninth Circuit uses a benchmark rate of twenty-five percent of the potential damages as the amount of attorneys’ fees. *In re Quintus Sec. Litig.*, 148 F. Supp. 2d 967, 973 (N.D. Cal. 2001) (benchmark for attorneys’ fees is 25% of the common fund). Courts therefore include a potential 25% fee award in the CAFA amount in controversy. *See, e.g., Sanchez*, 2015 WL 12765359, at *7. Even though Amazon has already demonstrated by a preponderance of the evidence that the amount in controversy exceeds \$5,000,000, Amazon notes that the inclusion of attorneys’ fees would add at least another \$2,718,503.40 to the amount in controversy (25% of \$10,874,013.60), bringing the total amount in controversy to at least \$13,592,517.

IV. VENUE

30. This action was originally filed in San Diego County Superior Court. Initial venue is therefore proper in this district, pursuant to 28 U.S.C. § 1441(a), because it encompasses the county in which this action has been pending.

1 **V. NOTICE**

2 31. Amazon will promptly serve this Notice of Removal on all parties and
3 will promptly file a copy of this Notice of Removal with the clerk of the state court
4 in which the action is pending, as required under 28 U.S.C. § 1446(d).

5 **VI. CONCLUSION**

6 32. Based on the foregoing, Amazon requests that this action be removed
7 to this Court. If any question arises as to the propriety of the removal of this action,
8 Amazon respectfully requests the opportunity to present a brief and oral argument
9 in support of its position that this case is subject to removal.

10 Dated: September 14, 2017

Respectfully submitted,

11 MORGAN, LEWIS & BOCKIUS LLP

12 By /s/ Theresa Mak

13 John S. Battenfeld

14 Theresa Mak

Attorneys for Defendants

15 AMAZON.COM, INC. and
16 AMAZON LOGISTICS, INC.